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### Supreme Court of the United States

OCTOBER TERM, 1951

No. 2

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GEORGE STEFANELLI, JERRY MALANGA, JOSEPH  
MAGLIONE AND FRANK D'INNOCENZIO, PETI-  
TIONERS,

vs.

DUANE E. MINARD, JR., PROSECUTOR FOR ESSEX  
COUNTY, NEW JERSEY, ET AL.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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PETITION FOR CERTIORARI FILED DECEMBER 15, 1950.

CERTIORARI GRANTED MAY 14, 1951.



# SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 28, 1951.

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[fol. a]

**IN THE UNITED STATES COURT OF APPEALS FOR  
THE THIRD CIRCUIT**

Docket 10,211

**GEORGE STEFANELLI, Plaintiff-Appellant,**

**vs.**

**DUANE E. MINARD, JR., Prosecutor for Essex County, New  
Jersey, et al., Defendants-Respondents**

Docket 10,212

**JERRY MALANGA, JOSEPH MAGLIONE and FRANK  
D'INNOCENZIO, Plaintiffs-Appellants,**

**vs.**

**DUANE E. MINARD, JR., Prosecutor for Essex County, New  
Jersey, et al., Defendants-Respondents**

**On Appeals from Orders of the United States District  
Court, District of New Jersey**

**Appendix to Appellants' Brief**

**[fol. 1] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW  
JERSEY**

**DOCKET ENTRIES**

- 4-11-50 Complaint filed.
- 4-11-50 Order to Show Cause re: restraint filed.  
(Meaney)
- 4-11-50 Summons issued.
- 4-11-50 Notice of Allocation (Newark) filed.
- 4-12-50 Notice of motion to dismiss complaint with  
acknowledgment of service filed\* (ret. 4-17-50)
- 4-14-50 Notice of motion to dismiss complaint as to F.  
O'Neill, L. W. Sheridan and K. Lacey, with acknowledg-  
ment of service filed 4-13-50. (Ret. 4-13-50.)
- 4-19-50 Summons returned served on all defendants on  
4-11-50 together with affidavit of service of order to show  
cause filed.

4-19-50 Hearing on order to show cause re: restraint. Decision reserved. (Meaney) (4-17-50).

4-19-50 Ordered hearing on motions to dismiss complaint adjourned without date. (Meaney) (4-17-50).

4-26-50 Ordered application for preliminary injunction denied. Ordered motion to dismiss complaint granted. Orders to be submitted. (Meaney) (4-24-50).

4-26-50 Order for dismissal, with costs, in favor of the defendants, Duane E. Minard, Jr., John Schultz, William Anderson, Frank O'Neill, Lawrence W. Sheridan and Kenneth Lacey and against the plaintiff, George Stefanelli, filed. (Meaney) Notice mailed.

[Vol. 2] 4-26-50 Statement of Defendant's costs, taxed at \$20.00, filed.

4-26-50 Notice of Appeal filed.

4-26-50. Copies forwarded to William Caruso, Esq., Charles Handler, Esq., and Clerk, U. S. C. C. A.

5-17-50 Transcript of hearings on motions to dismiss complaint and on order to show cause re restraint, filed.

5-17-50 Designation of Contents of Record on Appeal, filed.

5-17-50 Points relied upon by defendant, filed.

5-17-50 Agreed Statement of Facts, filed.

5-23-50 Bond for Security for Costs, filed.

## IN UNITED STATES DISTRICT COURT

### COMPLAINT

George Stefanelli, Plaintiff, respectfully represents to this Honorable Court as follows:

1. This Court has jurisdiction by virtue of Title 28 United States Code Annotated, Section 1343, and by reason of the nature of this cause of action.

2. Plaintiff is a citizen of the United States and resides at 88 Tremont Avenue, Newark, New Jersey and brings this action in his own right.

3. Defendant, Duane E. Minard, Jr., is a citizen of the United States and is sued in his official capacity as Prosecutor for Essex County, New Jersey.

4. Defendant John Shultz, is a citizen of the United States and is sued in his official capacity as Prosecutor's Detective of Essex County, New Jersey.

[fol. 3] 5. William Anderson is a citizen of the United States and is sued in his official capacity as Prosecutor's Detective of Essex County, of New Jersey.

6. Frank O'Neill is a citizen of the United States and is sued in his official capacity as Chief of Police of the City of Newark, County of Essex and State of New Jersey.

7. Lawrence W. Sheridan, is a citizen of the United States, and is sued in his official capacity as a police officer of the City of Newark, County of Essex and State of New Jersey.

8. Kenneth Lacey, is a citizen of the United States, and is sued in his official capacity as a police officer of the City of Newark, County of Essex and State of New Jersey.

9. On or about December 6th, 1949, the plaintiff was residing at 88 Tremont Avenue, Newark, New Jersey with his wife and child and occupied the first floor of said premises. On that day the defendants, John Shultz, William Anderson, Lawrence W. Sheridan and Kenneth Lacey under the color of their office as police officers did break and enter into the home of the plaintiff, without his consent, knowledge or approval.

10. Without the consent, acquiescence or approval of the plaintiff, the defendants John Shultz and William Anderson, Lawrence W. Sheridan and Kenneth Lacey did unlawfully search all of the rooms, furniture and things of the plaintiff and unlawfully took and seized papers, paraphernalia, and other things, the property of the plaintiff, pertaining to the wagering and booking of horses which said police officers claimed to be in violation of the Statutes of New Jersey viz: New Jersey Revised Statutes Title 2:135-3.

11. That said defendant police officers by virtue of their color of office seized all of said papers, paraphernalia, and [fol. 4] things with the intent thereby to use the same as evidence against the plaintiff in the prosecution of criminal charges made by them for violation of the aforesaid statute pertaining to what is commonly called Bookmaking.

12. Plaintiff was admitted to bail and subsequently was indicted by the Essex County Grand Jury for unlawful bookmaking and upon which indictment he was arraigned and to which he pleaded not guilty.

13. The defendant, Duane E. Minard, Jr., by virtue of his office as Prosecutor for Essex County is charged with the duty of prosecuting the plaintiff on said indictment



and presenting the evidence unlawfully seized by the said police officers in order to sustain said indictment.

14. That the defendants, John Shultz and William Anderson are Detectives attached to the office of the Prosecutor for Essex County; and under the direction and supervision of Duane E. Minard, Jr., as aforesaid, and the defendants, Lawrence W. Sheridan and Kenneth Lacey are under the direction and supervision of the defendant, Frank O'Neill as Chief of Police of the City of Newark, Essex County of New Jersey.

15. That the aforesaid property and evidence unlawfully seized by the aforesaid police officers will be used against the plaintiff in the prosecution of said indictment to the irreparable damage of the plaintiff.

16. That the defendants by their course of conduct have violated the rights of the plaintiff under the Fourth Amendment to the United States Constitution and have further violated his rights under the laws of the United States, and more particularly, what is commonly called, "Civil Rights Law Title 8, Section 43", wherein it is provided that no person shall be deprived of any rights, privileges, and immunities secured by the Constitution of the United States [fol. 5] by any person who acts under the color of any statute, ordinance, custom or usage of any State or Territory, etc.

17. That the defendants John Shultz and William Anderson acted under the authority of the defendant Duane E. Minard, Jr., as Prosecutor for Essex County; and the defendants Lawrence W. Sheridan and Kenneth Lacey acted under the authority of the defendant Frank O'Neill, Chief of Police of the City of Newark, County of Essex, New Jersey.

18. That irreparable harm and injury will be caused to the plaintiff if the evidence seized by the aforesaid defendants is not suppressed and returned to the plaintiff and no other remedy is adequate to the plaintiff.

19. Plaintiff does not have an adequate remedy in the State Courts of New Jersey and invokes the jurisdiction of this Court to protect the immunities and privileges granted to him by the Constitution of the United States and the laws of the United States of America.



Wherefore, Plaintiff prays judgment of the Court as follows:

A. That a preliminary injunction, restraining and enjoining, be issued Duane E. Minard, Jr., in his official capacity as Prosecutor for Essex County, New Jersey, Prosecutor's Detective John Shultz, Prosecutor's Detective William Anderson, Chief of Police, Frank O'Neill, Police Officers Lawrence W. Sheridan and Kenneth Lacey and such other person or persons acting under and by the authority of Duane E. Minard, Jr., and Frank O'Neill and all other persons who act in concert with them or participation with them from using the seized property of the plaintiff, pending the determination of allegations of this Complaint and from further proceedings in connection with the prosecution of the aforesaid indictment, by the use of the seized property of the plaintiff.

B. That the evidence unlawfully obtained by the defendants be suppressed and returned to the plaintiff.

C. That an Order to Show Cause be made by this Honorable Court requiring the defendants to show cause as to why a preliminary restraint and injunction should not be made against the defendants against the use against plaintiff, as evidence of all of the property unlawfully seized by the defendants at any trial or hearing against the plaintiff.

D. That a judgment be ordered restraining and enjoining all of the defendants from using as evidence against the plaintiff all of the property unlawfully taken from the plaintiff together with all leads and information therefrom at any trial or hearing intended to be prosecuted by the defendants against the plaintiff.

E. That all of the property taken and seized from the plaintiff by the defendants be returned to him and the use thereof as evidence be suppressed at any trial or hearing prosecuted by the defendants in the State Courts of New Jersey.

Anthony A. Calandra, Attorney for Plaintiff.

## [fol. 7]      AFFIDAVIT OF GEORGE STEFANELLI

STATE OF NEW JERSEY,

County of Essex, ss.:

GEORGE STEFANELLI, of full age, being duly sworn, according to law on his oath deposes and says:

1. I am the plaintiff in the foregoing cause of action.
2. On December 6th, 1949, while I was in my home on the first floor of premises No. 88 Tremont Avenue, Newark, New Jersey, my kitchen door was broken into by Prosecutor's Detectives John Shultz and William Anderson, and by Newark Police Officers Lawrence W. Sheridan and Kenneth Lacey, and all of said police officers thereby gained entrance into my apartment without my consent and approval. All of said officers without my consent and approval searched all of my rooms and furnishings and in one room took certain papers, paraphernalia and things, all of which pertained to the wagering on race horses and bookmaking. No warrant for my arrest or for the search of my home was read or presented to me by any of the officers. I was placed under arrest, released on bond and subsequently indicted by the Essex County Grand Jury upon a charge of bookmaking in violation of the laws of the State of New Jersey. I have pleaded not guilty to this charge and trial has been fixed by Duane E. Minard, Jr. Prosecutor of Essex County, in the Essex County Court on April 17th, 1950.
3. The police officers of the City of Newark, New Jersey, acted by and with the authority of Frank O'Neill, Chief of Police of the City of Newark, New Jersey, and Prosecutor's Detectives Shultz and Anderson acted by and with the authority vested in them by color of their office, as did the local police officers, as aforesaid.
- [fol. 8] 4. The said Duane E. Minard, Jr. as Prosecutor for Essex County, intends to use all of my property which was unlawfully seized by the aforesaid law enforcement officers as evidence against me on the trial of the aforesaid indictment, and each of the aforesaid officers will produce and present as evidence against me all of my property consisting of papers, paraphernalia and things pertaining to the wagering on horse races and bookmaking in order to sustain the charge against me by the indictment aforesaid.
5. My constitutional rights were violated by the actions and conduct of the said officers and irreparable damage will

be caused to me unless the evidence is suppressed against me and my property returned. The penalty on conviction for bookmaking is not less than one year or more than five years imprisonment or a fine of not less than \$1,000.00 or more than \$5,000.00.

George Stefanelli.

Sworn and subscribed to before me this 10th day of April, A. D. 1950. Nicholas V. Calandra, a Notary Public of New Jersey.

[fol.9] IN UNITED STATES DISTRICT COURT

ORDER TO SHOW CAUSE

Filed April 11, 1950

Now comes the plaintiff, George Stefanelli, who has filed a Complaint in this Court wherein it is claimed that the defendants, John Shultz, Prosecutor's Detective for Essex County, New Jersey, William Anderson, Prosecutor's Detective for Essex County, New Jersey, Frank O'Neill, Chief of Police of the City of Newark, Essex County, New Jersey, Lawrence W. Sheridan, a police officer of the City of Newark, New Jersey and Kenneth Lacey, a police officer of the City of Newark, New Jersey, by virtue of their office and by the color thereof are prosecuting the plaintiff upon an indictment found by the Essex County Grand Jury for a crime commonly designated as Bookmaking in violation of New Jersey Revised Statutes Title 2:135-3;

And it appearing from said Complaint filed by the plaintiff that the defendants, John Shultz, William Anderson, Lawrence W. Sheridan and Kenneth Lacey, by virtue of their color of office and under the direction and authority of their superiors, Duane E. Minard, Jr., as Prosecutor for Essex County, New Jersey and Frank O'Neill, as Chief of Police of the City of Newark, New Jersey, County of Essex, did break and enter into the home of the plaintiff, without his consent and approval and therein made a search of plaintiff's home, without his consent and approval, and seized therein certain papers, paraphernalia and things pertaining to the operation of bookmaking, without his consent and approval, in violation of the constitutional rights of the



plaintiff; and that said property is intended to be used by the defendants as evidence against the plaintiff in the trial of the aforesaid indictment in the Essex County Court; [fol. 10] And it appearing from said Complaint that unless the relief prayed for by plaintiff is granted, that he will suffer irreparable harm and injury, and there being no other adequate remedy available to plaintiff;

And it appearing that this Court has jurisdiction in the premises by virtue of Title 28 of the United States Code Annotated Section 1343;

It is, therefore, on this 11th day of April, 1950, adjudged and ordered, that the defendants Duane E. Minard, Jr., Prosecutor for Essex County, John Shultz, Prosecutor's Detective for Essex County, New Jersey, William Anderson, Prosecutor's Detective for Essex County, New Jersey, Frank O'Neill, Chief of Police of the City of Newark, New Jersey, Lawrence W. Sheridan, Police Officer of the City of Newark, New Jersey and Kenneth Lacey, Police Officer of the City of Newark, New Jersey, show cause before this Court on Monday, the 17th day of April 1950, why they should not be restrained and enjoined from using the property of the plaintiff and seized by said officers as evidence against plaintiff at any trial or hearing, by the preliminary injunction of this Court; and to further show cause why the evidence seized by said officers by virtue of their color of office should not be suppressed and returned to the plaintiff, and why the judgment prayed for in the Complaint should not be granted.

And it is further ordered that a copy of the Complaint together with a copy of this order be served upon each of the defendants within 1 day from the date of this order.

Thos. F. Meaney, U. S. D. J.

9 [fol. 11] IN UNITED STATES DISTRICT COURT

#### MOTION TO DISMISS COMPLAINT

The defendants, Duane E. Minard, Jr., John Schultz, and William Anderson moved the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against the said defendants upon which relief can be granted.



2. To dismiss the action on the ground that the Court lacks jurisdiction in the premises.

C. William Caruso, Attorney for Defendants, Duane E. Minard, Jr., John Schultz and William Anderson, Essex County Prosecutor's Office, Court House, Newark, New Jersey.

[fol. 12] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS COMPLAINT

The defendants Frank O'Neill, Lawrence W. Sheridan and Kenneth Lacey move the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against the said defendants upon which relief can be granted.

2. To dismiss the action on the ground that the Court lacks jurisdiction in the premises.

Charles Handler, Corporation Counsel Attorney for Defendants, Frank O'Neill, Lawrence W. Sheridan and Kenneth Lacey, Law Department, City Hall, Newark, New Jersey.

[fol. 13] IN UNITED STATES DISTRICT COURT

ORDER DISMISSING COMPLAINT ETC.

This matter coming on to be heard in the presence of Anthony A. Calandra, Esq., Attorney for plaintiff, George Stefanelli, and C. William Caruso, Esq., Attorney for defendants, Duane E. Minard, Jr., Prosecutor for Essex County, John Schultz, Prosecutor's Detective for Essex County, and William Anderson, Prosecutor's Detective for Essex County, and Vincent J. Casale, Esq., of counsel with Charles Handler, Esq., Attorney for defendants, Frank O'Neill, Chief of Police, City of Newark, Lawrence W. Sheridan, Police Officer, City of Newark, and Kenneth Lacey, Police Officer, City of Newark, upon the complaint, order to show cause and motions for dismissal of said complaint, and good cause being shown therefor, and after

argument of counsel thereon and it appearing that the plaintiff has not exhausted his remedies under state law,

It is on this 26th day of April, 1950,

Ordered, that the complaint filed in the above entitled cause and the rule to show cause heretofore issued be and the same are hereby dismissed.

Thomas F. Meaney, U. S. D. J.

Consent is hereby given as to form:

Anthony A. Calandra, Attorney for Plaintiff, George Stefanelli, C. William Caruso, Attorney for Defendants, Duane E. Minard, Jr., John Schultz and William Anderson. Charles Handler, Attorney for Defendants, Frank O'Neill, Lawrence W. Sheridan and Kenneth Lacey.

[fol. 14] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL

Name and address of Appellant:

George Stefanelli, resides at 88 Tremont Avenue,  
Newark, New Jersey.

Name and address of Appellant's Attorney:

Anthony A. Calandra, Esquire,  
31 Clinton Street, Newark, New Jersey.

Judgment appealed from:

Appellant appeals to the United States Court of Appeals for the Third Circuit, from the Judgment and Order made in the United States District Court for the District of New Jersey, dismissing the Complaint filed by the Appellant and Order to Show Cause issued by the said District Court. Appellant filed a Complaint in equity by virtue of the original jurisdiction vested in the United States District Court seeking to suppress evidence unlawfully and unreasonably seized by police officers of the City of Newark, New Jersey, from the appellant without a warrant for the arrest of the appellant or a search warrant; and to enjoin the said police officers and prosecuting officials

from using said evidence at any trial or hearing of criminal proceedings now pending against appellant in the State Courts of New Jersey.

George Stefanelli. Anthony A. Calandra, Attorney for and of Counsel with Appellant.

To: Hon C. William Caruso, Attorney for Duane Minard, Jr., Prosecutor for Essex County, John Shultz and William Anderson, Court House, Newark, New Jersey.

To: Hon. Charles Handler, Attorney for Frank O'Neill, Chief of Police and all other defendants, City Hall, Newark, New Jersey.

[fol. 15]. IN UNITED STATES DISTRICT COURT

#### AGREED STATEMENT OF FACTS

The attorneys for the respective parties to these proceedings stipulate that the following facts are agreed upon and submitted for consideration in the appeal now pending in this cause in the United States Court of Appeals for the Third Circuit, viz:

1. That on December 6th, 1949, at about 2:45 P. M. Newark Police Officers, Lawrence Sheridan and Kenneth Lacey, accompanied by Prosecutor's Detectives John Schultz and William Anderson, in the performance of their official duties, went to appellant's residence, 88 Tremont Avenue, Newark, New Jersey.

2. Said officers at that time had no warrant for the arrest of the appellant.

3. Said officers at that time had no search warrant for the search of the appellant's residence and to make a seizure therein.

4. That said officers gained entrance into the residence of the appellant, without the consent of the appellant.

5. Appellant was present in his own apartment on the first floor of the premises in question, and after the entry by the police officers made no resistance to the search and seizure.

6. Papers, paraphernalia and other things the property of appellant, pertaining to wagering and booking of bets on horses in violation of New Jersey Revised Statutes 2:135-3, relating to the crime of bookmaking were seized by said officers.



7. The matters and things taken by the said police officers were concededly evidential *per se* and, therefore, admissible in evidence under the law of the State of New Jersey in a prosecution for the crime of bookmaking.

[fol. 16] 8. Appellant was arrested on said occasion on December 6th, 1949, arraigned before a local magistrate on December 7th, 1949, upon a formal complaint made by one of the arresting officers, charging appellant with bookmaking on December 6th, 1949, and a warrant for the arrest of appellant was issued and executed on December 7th, 1949, by said police officers.

9. Appellant pleaded not guilty to the charge and was held to await the action of the Essex County Grand Jury.

10. Appellant was indicted by the Essex County Grand Jury for the crime of bookmaking in violation of the New Jersey Statute R. S. 2:135-3, to which accusation he pleaded not guilty.

11. That the fruits of the search and seizure made in appellant's residence on December 6th, 1949, will be used as evidence by the appellees at the trial of the appellant in the Essex County Court.

12. Appellant took no proceedings in the Essex County Court to suppress the evidence he claims to have been unlawfully seized in violation of his constitutional rights.

13. Appellant's Complaint filed in the United States District Court sought to invoke the jurisdiction of said Court to enjoin the appellees from the use of the property taken from his residence as evidence, and that the same be suppressed and returned to appellant, claiming violation of the Fourth Amendment to the United States Constitution and U. S. C. A. Title 8, section 43.

[fol. 17] 14. The United States District Court for the District of New Jersey dismissed the Complaint and the Order to Show Cause.

Anthony A. Calandra, Attorney for Appellant.  
C. William Caruso, Attorney for Appellees, Duane E. Minard, Jr., etc., John Schultz, etc., and William Anderson. Charles Handler, Attorney for Appellees, Frank O'Neill, etc., Lawrence Sheridan and Kenneth, Lacey, etc.



[fol. 18] IN UNITED STATES DISTRICT COURT

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

It is hereby stipulated and agreed by and between the attorneys for the parties to the appeal now pending in this cause, in the United States Court of Appeals for the Third Circuit that the Record on Appeal shall consist of the following:

1. Complaint filed by appellant in the United States District Court for the District of New Jersey.
2. Order to Show Cause issued by the United States District Court for relief pending the proceedings on the Complaint.
3. Motions by all appellees to dismiss the Complaint.
4. Agreed Statement of Facts.
5. Judgment, (entitled Order) dismissing the Complaint and Order to Show Cause made on April 26th, 1950, by the Honorable Thomas F. Meaney, Judge of the United States District Court for the District of New Jersey.
6. Notice of Appeal.
7. Points relied upon by Appellant.

Anthony A. Calandra, Attorney for Appellant.  
C. William Caruso, Attorney for Appellees, Duane E. Minard, Jr., etc.; John Shultz, etc.; and William Anderson, etc. Charles Handler, Attorney for Appellees, Frank O'Neill, etc.; Lawrence E. Sheridan, etc., and Kenneth Lacey, etc.

[fol. 19] IN UNITED STATES DISTRICT COURT

POINTS RELIED UPON BY APPELLANT

George Stefanelli, the appellant, will rely upon the following points in the appeal now pending in the United States Court of Appeals for the Third Circuit:

1. That the United States District Court for the District of New Jersey, has original jurisdiction to grant the relief prayed for in the Complaint.
2. That the constitutional rights of the appellant guaranteed him by the Fourth and Fifth Amendments of the Constitution of the United States of America were violated.

3. That the constitutional rights of the appellant are fundamental and basic rights and are vested rights over which the United States District Court for the District of New Jersey must invoke the protections guaranteed by the Fourth and Fifth Amendments of the Constitution of the United States of America, and other amendments, to the extent prayed for, and grant the relief requested by the appellant as charged in his complaint.

4. That the denial of the relief requested by the appellant will cause appellant irreparable injury.

5. Appellant is not required to exhaust his remedies, if any he may have, in the State Courts of New Jersey, before invoking the processes of the Federal Courts for the relief which he seeks.

6. That the appellant has no adequate remedy in any of the State Courts of New Jersey, because all appellate courts of said state have consistently held that the fruits of an unlawful search and seizure, if evidential *per se*, are admissible in evidence against the accused.

Respectfully, Anthony A. Calandra, Attorney for Appellant.

[fol. 20] IN UNITED STATES DISTRICT COURT

#### DOCKET ENTRIES

4-19-50. Complaint filed.

4-19-50. Order to Show Cause re: restraint filed (Meaney) (ret. 4-24-50).

4-19-50. Summons issued.

4-19-50. Notice of Allocation (Newark) filed.

4-21-50. Notice of motion to dismiss complaint with acknowledgment of service filed (ret. 4-24-50).

4-26-50. Summons returned served on all defendants on 4-19-50 together with order to show cause filed.

4-26-50. Hearing on application for preliminary injunction. Ordered application denied. (Meaney) (4-24-50).

4-26-50. Ordered motion to dismiss complaint, granted. Order to be submitted. (Meaney) (4-24-50).

4-26-50. Order of dismissal with costs, in favor of the defendants, Duane E. Minard, Jr., Frank O'Neill, George E. Kaas, William Hull, James Clark, Clifford Heiss, John Walter, Anthony D'Amidio and Albert Franks and against

the plaintiffs, Jerry Malanga, Joseph Maglione and Frank D'Innocenzio, filed. (Meaney) (Notice mailed).

4-26-50. Statement of defendant's costs, taxed at \$20.00 filed.

4-26-50. Notice of Appeal filed.

4-26-50. Copies forwarded to Wm. Caruso, Esq., Chas. Handler, Esq., and Clerk, U. S. C. C. A.

5-17-50. Transcript of hearings on application for preliminary injunction and to dismiss complaint, filed.

5-17-50. Designation of Contents of Record on Appeal, filed.

5-17-50. Agreed Statement of Facts, filed.

5-17-50. Points relied upon by Appellants, filed.

5-23-50. Bond for Security for Costs, filed.

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[fol. 21] IN UNITED STATES DISTRICT COURT

### COMPLAINT

Jerry Malanga, Joseph Maglione, and Frank D'Innocenzio, plaintiffs, respectfully represent to this Honorable Court as follows:

1. This Court has jurisdiction by virtue of Title 28 United States Code Annotated, Section 1343, and by reason of the nature of this cause of action.

2. Plaintiff, Jerry Malanga is a citizen of the United States and resides at 68 High Street, Newark, New Jersey and brings this action in his own right.

3. Plaintiff, Joseph Maglione is a citizen of the United States and resides at 38 Mt. Prospect Avenue, Belleville, New Jersey and brings this action in his own right.

4. Plaintiff, Frank D'Innocenzio is a citizen of the United States and resides at 73 Stone Street, Newark, New Jersey and brings this action in his own right.

5. Frank O'Neill is a citizen of the United States and is sued in his official capacity as Chief of Police of the City of Newark, County of Essex and State of New Jersey.

6. Duane E. Minard, Jr., is a citizen of the United States and is sued in his official capacity as Prosecutor for Essex County, New Jersey.

7. George E. Kaas is a citizen of the United States and is sued in his official capacity as Police Commissioner of the City of Newark, New Jersey.



8. William Hull is a citizen of the United States and is sued in his official capacity as Police Detective of the City of Newark, New Jersey.

9. James Clark is a citizen of the United States and is sued in his official capacity as Police Detective of the City of Newark, New Jersey.

[fol. 22] 10. Clifford Heiss is a citizen of the United States and is sued in his official capacity as Police Detective of the City of Newark, New Jersey.

11. John Walter is a citizen of the United States and is sued in his official capacity as Police Detective of the City of Newark, New Jersey.

12. Anthony D'Emidio is a citizen of the United States and is sued in his official capacity as Police Detective of the City of Newark, New Jersey.

13. Albert Franks is a citizen of the United States and is sued in his official capacity as Police Detective of the City of Newark, New Jersey.

14. On or about April 5th, 1950 the plaintiffs occupied that attic rooms at premises 201 No. 13th Street, Newark, New Jersey. On that day the defendants William Hull, James Clark, Clifford Heiss, John Walter, Anthony D'Emidio and Albert Franks, under the color of their office as Police Detectives did break and enter into the rooms occupied by the plaintiffs, without their consent, knowledge or approval.

15. Without the consent, acquiescence or approval of the plaintiffs, the said defendants, William Hull, James Clark, Clifford Heiss, John Walter, Anthony D'Emidio and Albert Franks did unlawfully search the premises and property of the plaintiffs and unlawfully took and seized papers, paraphernalia and other things the property of the plaintiffs all of which pertained to the wagering and booking of horses which said Police Detectives claimed to be in violation of the Statutes of New Jersey Revised Statutes Title 2:135-3.

16. That the defendants by virtue of the color of their office seized all papers, paraphernalia and things without a search warrant or a warrant for the arrest of the plaintiffs [fol. 23] with the intent thereby to use the same as evidence against the plaintiffs in the prosecution of criminal charges made by said defendants charging a violation of the aforesaid Statutes pertaining to what is commonly called Book-



making. That in addition thereto the said defendants caused to be made a complaint against the plaintiffs for Malicious Mischief, charging that the plaintiffs did on this same day maliciously burn the property of another.

17. Plaintiffs were admitted to bail and held for a hearing on the complaints made against them by the defendants in the Municipal Court of the City of Newark, New Jersey, Part 2, on charges of Bookmaking and Malicious Mischief under the Laws of the State of New Jersey.

18. Plaintiffs were granted a hearing in said Municipal Court in the City of Newark and were held to await the action of the Essex County Grand Jury. Plaintiffs pleaded not guilty to each of said charges in said Municipal Court. The defendant, Duane E. Minard, Jr., by virtue of his office as Prosecutor for Essex County is charged with the duty of bringing the evidence illegally obtained by the other defendants to the Essex County Grand Jury to seek an indictment and prosecute the plaintiffs on said indictment.

19. That the defendants, Police Detectives, William Hull, James Clark, Clifford Heiss, John Walter, Anthony D'Emidio, and Albert Franks, acted under the authority of Frank O'Neill, as Chief of Police of the City of Newark and under the authority of the defendant, George E. Kaas as Police Commissioner of the City of Newark.

20. That the aforesaid property and evidence unlawfully seized by the defendants, as aforesaid, will be used against the plaintiffs to the irreparable damage of the plaintiffs.

[fol. 24] 21. That the defendants by their course of conduct have violated the rights of the plaintiffs under the Fourth Amendment to the United States Constitution and have further violated their rights under the laws of the United States, and more particularly, what is commonly called, "Civil Rights Law Title 8, Section 43", wherein it is provided that no person shall be deprived of any rights, privileges, and immunities secured by the Constitution of the United States by any person who acts under the color of any statute, ordinance, custom or usage of any State or Territory, etc.

22. That irreparable harm and injury will be caused to the plaintiffs if the evidence seized by the aforesaid defendants is not suppressed and returned to the plaintiffs and no other remedy is adequate to the plaintiffs.

23. Plaintiffs do not have an adequate remedy in the State Courts of New Jersey and invoke the jurisdiction of this Court to protect the immunities and privileges granted to him by the Constitution of the United States and the laws of the United States of America.

Wherefore, Plaintiffs pray judgment of the Court as follows:.

A. That a preliminary injunction be issued restraining and enjoining, Duane E. Minard, Jr., in his official capacity as Prosecutor for Essex County, New Jersey, Frank O'Neill, Chief of Police of the City of Newark, George S. Kaas Police Commissioner of the City of Newark, Police Detectives William Hull, James Clark, Clifford Heiss, John Walter, Anthony D'Emidio and Albert Franks, and such other person or persons acting under and by the authority of Duane E. Minard, Jr., and Frank O'Neill and all other persons who act in concert with them or participation with them from [fol. 25] using the seized property of the plaintiffs, pending the determination of allegations of this Complaint and from further proceedings in connection with the prosecution of the aforesaid indictment, by the use of the seized property of the plaintiffs.

B. That the evidence unlawfully obtained by the defendants be suppressed and returned to the plaintiffs.

C. That an Order to Show Cause be made by this Honorable Court requiring the defendants to show cause as to why a preliminary restraint and injunction should not be made against the defendants against the use against plaintiffs, as evidence of all of the property unlawfully seized by the defendants at any trial or hearing against the plaintiffs.

D. That a judgment be ordered restraining and enjoining all of the defendants from using as evidence against the plaintiffs all of the property unlawfully taken from the plaintiffs together with all leads and information therefrom at any trial or hearing intended to be prosecuted by the defendants against the plaintiffs.

E. That all of the property taken and seized from the plaintiffs by the defendants be returned to them and the use thereof as evidence be suppressed

at any trial or hearing prosecuted by the defendants in the State Courts of New Jersey.

Anthony A. Calandra, Attorney for Plaintiffs.

[fol. 26] AFFIDAVIT OF FRANK D'INNOCENZIO, JOSEPH MAGLIONE AND JERRY MALANGA

STATE OF NEW JERSEY,  
County of Essex, ss:

Frank D'Innocenzio, Joseph Maglione and Jerry Malanga, all of full age being severally sworn according to law on their oaths depose and say:

1. We are the plaintiffs in the foregoing cause of action.

2. On April 5, 1950, we occupied the attic rooms of premises 201 North 13th Street, Newark, New Jersey. We had for our use and occupation two rooms and a bathroom. There was a door from the hallway to each of the rooms occupied by us. The doors were locked and made secure against entry by the use of a heavy piece of wood on hinges, the purpose being to prevent anyone from forcibly entering these rooms. On the afternoon of said day Police Detectives broke down the doors and gained entry into the rooms without our consent and approval. They did not present to us a warrant for our arrest or a search warrant to search our rooms. Police Detectives William Hull, James Clark, Clifford Heiss, John Walter, Anthony D'Emidio and Albert Franks, without our consent and approval took and seized papers, paraphernalia, telephones, and other things which pertained to the operation of a bookmaking business and the wagering on horse races with intent to use this evidence against us to prosecute us on complaints made by said Police Detectives charging us with Bookmaking in violation of the Laws of New Jersey. Some papers were being burned in the bathtub and the Police Detectives likewise charged us with Malicious Mischief. We have pleaded not guilty to these charges in the Municipal Court of the City of Newark, Part 2 and after a hearing granted us on the complaints, we were held to await the action of the Essex County Grand Jury.

[fol. 27] The Police Detectives, William Hull, James Clark, Clifford Heiss, John Walter, Anthony D'Emidio,



Albert Franks acted by and with the authority of Frank O'Neill, Chief of Police of the City of Newark, New Jersey and by and with the authority of George E. Kass, Police Commissioner of the City of Newark.

That the evidence which was taken from us and pertaining to Bookmaking will be used by Duane E. Minard, Jr., Prosecutor for Essex County, New Jersey, to obtain an indictment against us and as well as to bring us to trial on said indictment and use said evidence for the purpose of convicting us.

Our Constitutional Rights were violated by the acts and conduct of the said Police Detectives and irreparable damage will be caused to us unless the evidence is suppressed against us and our papers returned to us. The penalty on the conviction of Bookmaking is not less than one year or more than five years imprisonment and a fine of not less than \$1,000.00 or more than \$5,000.00.

As to the penalty for Malicious Mischief upon conviction the Court could impose a sentence up to three years and a fine of up to \$1,000.00.

Frank D'Innocenzio, Joseph Maglione, Jerry Malanga.

Sworn and subscribed to before me this 19th day of April, 1950. Constance Forcella, Notary Public of New Jersey. My commission expires Feb. 17, 1954.

[fol. 28] IN UNITED STATES DISTRICT COURT

#### ORDER TO SHOW CAUSE

Now comes the plaintiffs, Jerry Malagna, Joseph Maglione and Frank D'Innocenzio, who have filed a Complaint in this Court wherein it is claimed that the defendants, Duane E. Minard, Jr., Prosecutor for Essex County, New Jersey, Frank O'Neill, Chief of Police of the City of Newark, New Jersey, George E. Kaas, Police Commissioner of the City of Newark, New Jersey, Police Detective William Hull of the City of Newark, Police Detective James Clark of the City of Newark, Police Detective Clifford Heiss of the City of Newark, Police Detective John Walter of the City of Newark, Police Detective Anthony D'Emidio of the

City of Newark and Police Detective Albert Franks of the City of Newark, New Jersey, by virtue of their office and by the color thereof are prosecuting the plaintiffs upon an indictment found by the Essex County Grand Jury for a crime commonly designated as Bookmaking in violation of New Jersey Revised Statutes Title 2:135-3:

And it appearing from said Complaint filed by the plaintiffs that the defendants William Hull, James Clark, Clifford Heiss, John Walter, Anthony D'Emidio and Albert Franks by virtue of their color of office and under the direction and authority of their superiors, Duane E. Minard, Jr., as Prosecutor for Essex County, Frank O'Neill as Chief of Police of the City of Newark, New Jersey, County of Essex, did break and enter into the place of the plaintiffs, without their consent and approval and therein made a search of plaintiffs' place, without their consent and approval, and seized therein certain papers, paraphernalia and things pertaining to the operation of bookmaking, without their consent and approval, in violation of the constitutional rights of the plaintiffs; and that said property is intended to be used by the defendants as evidence against the plaintiffs in the trial of the aforesaid indictment in the Essex County Court;

[fol. 29] And it appearing from said Complaint that unless the relief prayed for by plaintiffs is granted, that they will suffer irreparable harm and injury, and there being no other adequate remedy available to plaintiffs;

And it appearing that this Court has jurisdiction in the premises by virtue of Title 20 of the United States Code Annotated Section 1343:

It is therefore, on this 19th day of April, 1950, adjudged and ordered, that the defendants Duane E. Minard, Jr., Prosecutor for Essex County, Frank O'Neill, Chief of Police of the City of Newark, George H. Kaas, Police Commissioner of the City of Newark, William Hull, Police Detective of the City of Newark, James Clark, Police Detective of the City of Newark, Clifford Heiss, Police Detective of the City of Newark, John Walter, Police Detective of the City of Newark, Anthony D'Emidio, Police Detective of the City of Newark and Albert Franks, Police Detective of the City of Newark, New Jersey, show cause before this Court on Monday the 24th day of April 1950, why they should not be restrained and enjoined from using the property of the plaintiffs and seized by said officers as evidence

against plaintiffs at any trial or hearing, by the preliminary injunction of this Court; and to further show cause why the evidence seized by said Police Detectives by virtue of their color of office should not be suppressed and returned to the plaintiffs, and why the judgment prayed for in the Complaint should not be granted.

And it is further ordered that a copy of the Complaint together with a copy of this order be served upon each of the defendants within 1 day from the date of this order.

Thomas F. Meaney, U. S. D. J.

[fol. 30] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS COMPLAINT

The above-named defendants move the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against the said defendant upon which relief can be granted.
2. To dismiss the action on the ground that the Court lacks jurisdiction in the premises.

C. William Caruso, Attorney for Defendant, Duane E. Minard, Jr. Charles Handler, Attorney for All Other Defendants.

IN UNITED STATES DISTRICT COURT

ORDER DISMISSING COMPLAINT ETC.

This matter coming on to be heard in the presence of Anthony A. Calandra, Esq., Attorney for plaintiffs, Jerry Malanga, Joseph Maglione and Frank D'Innocenzio, and C. William Caruso, Esq., Attorney for defendant, Duane E. Minard, Jr., Prosecutor for Essex County, New Jersey, and Vincent J. Casale, Esq., of counsel with Charles Handler, Esq., Attorney for defendants, Frank O'Neill, Chief of Police of the City of Newark, New Jersey, George E. Kaas, Police Commissioner of the City of Newark, William Hull, Police Detective of the City of Newark, James Clark,



Police Detective of the City of Newark, Clifford Heiss, Police Detective of the City of Newark, John Walter, Police Detective of the City of Newark, Anthony D'Amidio, Police Detective of the City of Newark and Albert Franks, Police Detective of the City of Newark, upon the complaint, order to show cause and motions for dismissal of said complaint, [fol. 31] and good cause being shown therefor, and after argument of counsel thereon it appearing that the plaintiffs have not exhausted their remedies under state law.

It is on this 26th day of April, 1950

Ordered, that the complaint filed in the above entitled cause and the rule to show cause heretofore issued be and the same are hereby dismissed.

Thomas F. Meaney, U. S. D. J.

Consent is hereby given as to form:

Anthony A. Calandra, Attorney for Plaintiffs, Jerry Malanga, Joseph Maglione and Frank D'Innocenzio. C. William Caruso, Attorney for Defendant, Duane E. Minard, Jr. Charles Handler, Attorney for Defendants, Frank O'Neill, George E. Kaas, William Hull, James Clark, Clifford Heiss, John Walter, Anthony D'Amidio and Albert Franks.

[fol. 32] IN UNITED STATES DISTRICT COURT

#### NOTICE OF APPEAL

Name and address of Appellants:

Jerry Malanga, resides at 69 Hight Street, Newark, New Jersey, Joseph Maglione, resides at 38 Mt. Prospect Avenue, Belleville, New Jersey and Frank D'Innocenzio resides at 73 Stone Street, Newark, New Jersey.

Name and address of Appellants' Attorney:

Anthony A. Calandra, Esquire, 31 Clinton Street, Newark, New Jersey.

Judgment appealed from:

Appellants appeal to the United States Court of Appeals for the Third Circuit, from the Judgment and Order made

in the United States District Court for the District of New Jersey, dismissing the Complaint filed by the Appellants and Order to Show Cause issued by the said District Court. Appellants filed a Complaint in equity by virtue of the original jurisdiction vested in the United States District Court seeking to suppress evidence unlawfully and unreasonably seized by police officers of the City of Newark, New Jersey from the appellants without a warrant for the arrest of the appellants or a search warrant; and to enjoin the said police officers and prosecuting officials from using said evidence at any trial or hearing or criminal proceedings now pending against appellants in the State Courts of New Jersey.

Jerry Malanga, Joseph Maglione, Frank D'Innocenzio; Anthony A. Calandra, Attorney for and of Counsel with Appellants.

To: Hon. C. William Caruso, Attorney for Duane E. Minard, Jr., Prosecutor for Essex County Court House, Newark, New Jersey.

To: Hon. Charles Handler, Vincent J. Casale, Esquire, attorneys for Frank O'Neill, Chief of Police and all other defendants, City Hall, Newark, New Jersey.

[fol. 34] IN UNITED STATES DISTRICT COURT

#### AGREED STATEMENT OF FACTS

The attorneys for the respective parties to these proceedings stipulate that the following facts are agreed upon and submitted for consideration in the appeal now pending in this cause, in the United States Court of Appeals for the third Circuit, viz:

1. That on April 5th, 1950, at about 2:00 P. M. Newark Police Officers, William Hull, James Clark, Clifford Heiss, and John Walter, in the performance of their official duties, went to the third floor attic rooms at 201 North 13th Street, Newark, New Jersey, and occupied by the appellants.

2. Said police officers at that time had no warrant for the arrest of the appellants.

3. Said police officers at that time had no search warrant for the search of the appellants' premises and to make a seizure therein.

4. That said police officers gained entrance into said premises without the consent of the appellants.

5. Appellants were all present in the said attic rooms at the time of the entry by said police officers and made no resistance to the search and seizure.

6. Papers, paraphernalia and other things, the property of the appellants, pertaining to wagering and booking bets on horses in violation of New Jersey Revised Statutes 2:135-3, relating to the crime of bookmaking were seized by said officers.

7. The matters and things taken by the said police officers were concededly evidential *per se* and, therefore, admissible in evidence under the law of the State of New Jersey in a prosecution for the crime of bookmaking.

8. Appellants were arrested on said occasion on April 5th, 1950, arraigned before a local magistrate on April 6th, 1950, upon a formal complaint made by one of the arresting officers, charging appellants with bookmaking on April 5th, [fol. 35] 1950, and a warrant for the arrest of appellants was issued and executed on April 6th, 1950, by said arresting officers.

9. Appellants, at the preliminary hearing before the local police magistrate pleaded not guilty; the evidence seized by the police officers without a search warrant was admitted in evidence over the objection of the appellants made on constitutional grounds; thereupon, appellants were held to await the action of the Essex County Grand Jury, which body has not as yet heard the evidence in this cause.

10. That the fruits of the search and seizure made of appellants' property in the premises, will be used in evidence before the Grand Jury and will also be used at the trial of appellants upon any indictment returned.

11. Appellants have taken no proceedings in the State Courts to suppress the evidence which they claim to have been unlawfully seized in violation of their constitutional rights.

12. Appellants' Complaint filed in the United States District Court sought to invoke the jurisdiction of said Court to enjoin the appellees from the use of the property taken from his residence as evidence, and that the same be suppressed and returned to appellant, claiming violation of the Fourth Amendment of the United States Constitution and U. S. C. A. Title 8, section 43.



13. The United States District Court for the District of New Jersey dismissed the Complaint and the Order to Show Cause.

Anthony A. Calandra, Attorney for Appellants. C. William Caruso, Attorney for Appellee, Duane E. Minard, Jr., etc. Charles Handler, Attorney for all other Appellees.

[fol. 36] IN UNITED STATES DISTRICT COURT

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

It is hereby stipulated and agreed by and between the attorneys for the parties to the appeal now pending in this cause, in the United States Court of Appeals for the Third Circuit, that the Record on Appeal shall consist of the following:

1. Complaint filed by appellants in the United States District Court for the District of New Jersey.
2. Order to Show Cause issued by the United States District Court for relief pending the proceedings on the Complaint.
3. Motions by all appellees to dismiss the Complaint.
4. Agreed Statement of Facts.
5. Judgment (entitled Order) dismissing the Complaint and Order to Show Cause made on April 26th, 1950, by the Honorable Thomas F. Meaney, Judge of the United States District Court for the District of New Jersey.
6. Notice of Appeal.
7. Points relied upon by Appellants.

Anthony A. Calandra, Attorney for Appellants.  
C. William Caruso, Attorney for Appellee, Duane E. Minard, Jr., etc. Charles Handler, Attorney for All Other Appellees.

[fol. 37] IN UNITED STATES DISTRICT COURT

POINTS RELIED UPON BY APPELLANT

Jerry Malanga, Joseph Maglione and Frank D'Innocenzio, the appellants, will rely upon the following points in the appeal now pending in the United States Court of Appeal for the Third Circuit.

1. That the United States District Court for the District of New Jersey, has original jurisdiction to grant the relief prayed for in the Complaint.

2. That the constitutional rights of the appellants guaranteed them by the Fourth and Fifth Amendments of the Constitution of the United States of America were violated.

3. That the constitutional rights of the appellants are fundamental and basic rights and are vested rights over which the United States District Court for the District of New Jersey must invoke the protections guaranteed by the Fourth and Fifth Amendments of the Constitution of the United States of America, and other amendments, to the extent prayed for, and grant the relief requested by the appellants as charged in their Complaint.

4. That the denial of the relief requested by the appellants will cause appellants irreparable injury.

5. Appellants are not required to exhaust their remedies, if any they may have, in the State Courts of New Jersey, before invoking the processes of the Federal Courts for the relief which they seek.

6. That the appellants have no adequate remedy in any of the State Courts of New Jersey, because all appellate courts of said state have consistently held that the fruits of an unlawful search and seizure, if evidential *per se*, are admissible in evidence against the accused.

Respectfully, Anthony A. Calandra, Attorney for appellants.





[fol. 38] [Stamp:] Received & Filed May 29, 1950. Ida O. Creskoff, Clerk.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Civil Action Petition to Consolidate

Docket #10,211

GEORGE STEFANELLI, Appellant,

vs.

DUANE E. MINARD, etc., et als, Appellees

Civil Action Petition to Consolidate

Docket #10,212

JERRY MALANGA, et als, Appellants,

vs.

DUANE E. MINARD, etc., et als, Appellees

To the Honorable, the Judges of the United States Court of Appeals for the Third Circuit:

The above entitled causes are now pending on appeal from the judgments of the United States District Court for the District of New Jersey.

The appellants in each of the above entitled matters filed a complaint in the United States District Court for the District of New Jersey seeking equitable relief pursuant to the provisions of Title 8 U. S. C. A. Section 43; commonly referred to as "Civil Rights Laws". Appellants contend that their fundamental and civil and basic rights were infringed in violation of the Fourth and Fourteenth Amendments of the Federal Constitution. Appellants by these proceedings sought to suppress certain evidence seized by police officers and detectives taken by them, without their consent, and without a warrant for their arrest or a search warrant to seize their property and further to enjoin the appellees from the use of said evidence in any trial in the State Courts of New Jersey.

Appellants, after the seizure of their property, were [fol. 39] arrested and charged with the crime of book-

making in violation of the laws of the State of New Jersey.

Appellants contended in the United States District Court for the District of New Jersey that irreparable injury would be caused them if the said court did not grant them the relief prayed for. Orders to Show Cause were issued by the trial court and the complaint and said orders were dismissed, after oral argument, by said Court.

Appellants and Appellees, through counsel, have by written stipulation agreed to the facts necessary to be considered on the appeals.

The questions involved and points to be argued are the same in each of the appeals and may reasonably and logically—heard and argued together.

We respectfully pray that an order be made by this Honorable Court consolidating the appeals so that but one Brief and Appendix thereto be filed by appellants for the consideration and determination of the issues involved in each appeal.

Respectfully,

Anthony A. Calandra, Attorney for Appellants.

[fol. 40] [Endorsed:] United States Court of Appeals for the Third Circuit. George Stefanelli, Appellant, vs. Duane E. Minard, etc., et als, Appellees. Jerry Malanga, et als, Appellants, vs. Duane E. Minard, etc., et als, Appellees. Civil Action Petition to Consolidate. Docket #10,211. Civil Action Petition to Consolidate. Docket #10,212. Anthony A. Calandra, Counsellor at Law, 31 Clinton Street, Newark, New Jersey.

[fol. 41] IN THE UNITED STATES COURT OF APPEALS FOR THE  
THIRD CIRCUIT

No. 10,211

GEORGE STEFANELLI, Appellant,

v.

DUANE E. MINARD, etc., et al., Appellees

No. 10,212

JERRY MALANGA, et al., Appellants,

v.

DUANE E. MINARD, etc., et al., Appellees

Upon consideration of the motion of Anthony A. Calandra, Esquire, attorney for the appellants, and with the consent of counsel for the appellee,

It is Ordered that the above entitled cases be and they hereby are consolidated for briefing and argument.

Maris, Circuit Judge.

May 29, 1950.

(Received & Filed May 29, 1950. Ida O. Creskoff, Clerk.)



[fol. 42] UNITED STATES COURT OF APPEALS FOR THE THIRD  
CIRCUIT

Docket 10,211-10,212

GEORGE STEFANELLI, Plaintiff-Appellant,

vs.

DUANE E. MINARD, JR., Prosecutor for Essex County, New  
Jersey, et als., Defendants-Respondents

JERRY MALANGA, JOSEPH MAGLIONE and FRANK D'INNO-  
CENZIO, Plaintiffs-Appellants,

vs.

DUANE E. MINARD, JR., Prosecutor for Essex County, New  
Jersey, et als., Defendants-Respondents

On Appeals from Orders of the United States District  
Court, District of New Jersey

ORDER EXTENDING TIME FOR FILING AND SERVING  
DEFENDANTS-RESPONDENTS' BRIEF

Upon application of defendants-respondents in the above  
entitled cause, and good cause being shown therefor, it is  
on this 30th day of June, 1950,

Ordered that the time for the serving and filing of the  
defendants-respondents' brief be and the same is hereby  
extended to September 25, 1950, inclusive.

McLaughlin, Circuit Judge for the Court.

(Received & Filed June 30, 1950. Ida O. Creskoff, Clerk.)

[fol. 43] UNITED STATES COURT OF APPEALS FOR THE THIRD  
CIRCUIT

No. 10,211

GEORGE STEFANELLI, Appellant,

v.

DUANE E. MINARD, JR., Prosecutor for Essex County, New  
JERSEY, et al.

No. 10,212

JERRY MALANGA, JOSEPH MAGLIONE and FRANK D'INNO-  
CENZIO, Appellants,

v.

DUANE E. MINARD, JR., Prosecutor for Essex County, New  
Jersey, et al.

Argued October 19, 1950

Before Biggs, Chief Judge, and Kalodner and Hastie,  
Circuit Judges

OPINION OF THE COURT—Filed October 31, 1950

Per CURIAM:

The appeals in the instant cases are without merit. Every question here raised by the appellants can be asserted by [fol. 44] them in the New Jersey State Courts and the way to the Supreme Court of the United States lies open. Federal courts should not enjoin criminal proceedings in state courts save in exceptional cases to prevent irreparable injury which is clear and imminent. *Douglas v. Jeannette*, 319 U. S. 157. As to the application of the principles of the Fourth Amendment to the cases at bar see *Wolf v. Colorado*, 338 U. S. 25. The judgments will be affirmed.

A true Copy. Teste:

—, Clerk of the United States Court of Ap-  
peals for the Third Circuit.

[fol. 45] UNITED STATES COURT OF APPEALS FOR THE THIRD  
CIRCUIT

No. 10,211

GEORGE STEFANELLI, Appellant,

vs.

DUANE E. MINARD, JR., Prosecutor for Essex County, New  
Jersey;

JOHN SHULTZ, Prosecutor's Detective for Essex County;  
William Anderson, Prosecutor's Detective for Essex  
County; Frank O'Neill, Chief of Police, City of  
Newark; Lawrence W. Sheridan, Police Officer, City of  
Newark; and Kenneth Lacey, Police Officer, City of  
Newark

On Appeal from the United States District Court for the  
District of New Jersey

Present: Biggs, Chief Judge, and Kalodner and Hastie,  
Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the  
United States District Court for the District of New Jer-  
sey and was argued by counsel

On consideration whereof, it is now here ordered and  
adjudged by this Court that the judgment of the said Dis-  
trict Court in this case be, and the same is hereby affirmed,  
with costs.

Attest:

Ida O. Creskoff, Clerk.

October 31, 1950.

(Received & Filed Oct. 31, 1950. Ida O. Creskoff, Clerk.)



[fol. 46] UNITED STATES COURT OF APPEALS FOR THE THIRD  
CIRCUIT

No. 10,212

JERRY MALANGA, JOSEPH MAGLIONE AND FRANK D'INNOCENZIO,  
Appellants,

vs.

DUANE E. MINARD, JR., Prosecutor for Essex County, New  
Jersey;

FRANK O'NEILL, Chief of Police of the City of Newark, New  
Jersey; George E. Kaas, Police Commissioner of the  
City of Newark; William Hull, Police Detective of the  
City of Newark; James Clark, Police Detective of the  
City of Newark; Clifford Heiss, Police Detective of the  
City of Newark; John Waiter, Police Detective of the  
City of Newark; Anthony D'Amidio, Police Detective of  
the City of Newark; and Albert Franks, Police Detective  
of the City of Newark

On Appeal from the United States District Court for the  
District of New Jersey

Present: Biggs, Chief Judge, and Kalodner and Hastie,  
Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the  
United States District Court for the District of New Jersey  
and was argued by counsel.

On consideration whereof, it is now here ordered and  
adjudged by this Court that the judgment of the said Dis-  
trict Court in this case be, and the same is hereby affirmed,  
with costs.

Attest:

Ida O. Creskoff, Clerk.

October 31, 1950.

(Received & Filed Oct. 31, 1950. Ida O. Creskoff, Clerk.)

[fol. 47] Clerk's Certificate to foregoing transcript  
omitted in printing.



[fol. 45] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 14, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(5105)